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PART 52. HEALTH THREATS TO OTHERS > § 333.5207. **Protection of public health in emergency; affidavit; court order; taking individual into custody; transporting individual to emergency care or treatment facility; temporary detention; notice of hearing; continued temporary detention; petition.**

Citation: **mcl 333.2226**

Section: **MCLS § 333.5207**

MCLS § 333.5207

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CHAPTER 333 HEALTH
PUBLIC HEALTH CODE
ARTICLE 5. PREVENTION AND CONTROL OF DISEASES, INFECTIONS, AND DISABILITIES
PART 52. HEALTH THREATS TO OTHERS

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MCLS § 333.5207 (2004)

MCL § 333.5207

§ 333.5207. Protection of public health in emergency; affidavit; court order; taking individual into custody; transporting individual to emergency care or treatment facility; temporary detention; notice of hearing; continued temporary detention; petition.

Sec. 5207. (1) To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention.

(2) An affidavit filed by a department representative or a local health officer under subsection (1) shall set forth the specific facts upon which the order is sought including, but not limited to, the reasons why an emergency order is sought.

(3) An individual temporarily detained under subsection (1) shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue.

(4) Notice of a hearing under subsection (3) shall be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain all of the following information:

- (a) The time, date, and place of the hearing.
- (b) The grounds and underlying facts upon which continued detention is sought.
- (c) The individual's right to appear at the hearing.
- (d) The individual's right to present and cross-examine witnesses.
- (e) The individual's right to counsel, including the right to counsel designated by the circuit court, as described in section 5205(13).

(5) The circuit court may order that the individual continue to be temporarily detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. An order under this subsection to continued temporary detention shall not continue longer than 5 days, unless a petition is filed under section 5205. If a petition is filed under section 5205, the temporary detention shall continue until a hearing on the petition is held under section 5205.

HISTORY: Act 368, 1978, p 865; eff September 30, 1978.

Pub Acts 1978, No. 368, § 5207, as added by Pub Acts 1988, No. 490, eff March 30, 1989 (see 1988 note below).

Amended by Pub Acts 1997, No. 57, imd eff July 7, 1997, by enacting § 1 eff January 1, 1998.

NOTES:

Editor's notes:

Pub Acts 1988, No. 490, § 2, eff March 30, 1989, provides:

"Section 2. This amendatory act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

- "(a) House Bill No. 4008 [which became Act No. 471 of 1988].
- "(b) House Bill No. 4103 [which became Act No. 489 of 1988].
- "(c) House Bill No. 5189 [which became Act No. 488 of 1988].
- "(d) Senate Bill No. 1041 [which became Act No. 491 of 1988]."

Effect of amendment notes:

The 1997 amendment deleted "probate" before "court" throughout the section; substituted "circuit court" for "probate court" throughout the section; and in subsection (4), paragraph (e), replaced "5205(9)" with "5205(13)".

Statutory references:

Section 5205, above referred to, is § 333.5205 .

Michigan Digest references:

Health § 13

Municipal Corporations §§ 41.50, 212

LEXIS Publishing Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare §§ 3, 4, 6

CASE NOTES

I. UNDER CURRENT LAW

1. Construction and effect.

2-15. [Reserved for use in future supplementation.]

II. UNDER FORMER PROVISIONS

16. Order of commitment [former 333.5219].

I. UNDER CURRENT LAW

1. Construction and effect.

The Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome (SARS) or smallpox; only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency where a 72-hour hold is permitted, such an order is subject to notice and an opportunity for a hearing. Similarly, neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease. Op Atty Gen, Oct. 6, 2003, No. 7141.

2-15. [Reserved for use in future supplementation.]

II. UNDER FORMER PROVISIONS

16. Order of commitment [former 333.5219].

In an action against a health officer for unlawful restraint of plaintiff's liberty after having been found to be infected with a dangerous and communicable disease, the question whether he was such a menace to public health as to warrant his confinement in a detention hospital was a question for the jury. Rock v Carney (1921) 216 Mich 280, 185 NW 798, 22 ALR 1178.

In an action against a health officer for unlawful restraint of plaintiff's liberty, the question of whether plaintiff, who was infected with a venereal disease, was unreasonably refused quarantine at home, was a question of fact for the jury. Rock v Carney (1921) 216 Mich 280, 185 NW 798, 22 ALR 1178.

In an action against a health officer for unlawful restraint of plaintiff's liberty, in the absence of some showing on the part of the defendant that he acted in good faith, or had reasonable grounds to believe that plaintiff was infected with a communicable disease, a directed verdict for defendant was erroneous. Rock v Carney (1921) 216 Mich 280, 185 NW 798, 22 ALR 1178.

Provision of former section, giving patient right to select physician or mode of treatment of his choice, was intended to apply to persons willing and able to pay for their own care and hospitalization, and not to persons who were public charges and were legally ordered admitted. Op Atty Gen, June 15, 1960, No. 3426.

State Health Commissioner, on his own motion or at behest of county of settlement, has right to change place of treatment ordered by probate court, subject to review by probate court on application made within 30 days after patient is informed of such change. Op Atty Gen, June 14, 1960, No. 3535.

Force cannot be used to remove an afflicted person against his will from this state to the state of his legal settlement under any circumstances. Op Atty Gen, September 14, 1943, No. 0-1096.

Patients proceeded against under former act should be committed to penal or correctional institutions only when such patient should have been determined to be a disorderly person by judicial finding after commitment for treatment, in the first instance, in an approved hospital or institution. Op Atty Gen, September 21, 1942, No. 24570.